

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**SHAWNA C. MITCHELL,**

Plaintiff,

v.

**CAROLYN W. COLVIN,**  
Commissioner of Social Security,

Defendant.

Case No. 6:12-cv-01062-HU

**ORDER**

**Michael H. Simon, District Judge.**

United States Magistrate Judge Dennis J. Hubel issued Findings and Recommendation in this case on February 19, 2014. Dkt. 22. Judge Hubel recommended that the motion for remand submitted by Defendant Carolyn W. Colvin (the “Commissioner”) be granted, and that the Commissioner be order to do the following: “(1) Obtain a psychological evaluation of [Plaintiff Shawna C. Mitchell (“Mitchell”)] with a psychiatrist, if available (or an adequate showing as to why no psychiatrist was available), or a psychologist with adequate training and experience in pharmacology to evaluate the effects of Mitchell’s medications on her cognitive abilities and depression; (2) Hold a further [Administrative Law Judge] hearing at which the evaluating psychiatrist/psychologist testifies and is available for cross-examination by Mitchell’s counsel, if

desired; and (3) Complete the proceedings upon remand and issue a decision within six months from the date of the court's remand order." *Id.* at 48-49. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendation, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate's findings and recommendation if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendation for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Hubel's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Hubel's Findings and Recommendation, Dkt. 22. The Court **GRANTS** the Commissioner's Motion for Remand (Dkt. 19), and **ORDERS** the Commissioner to:

(1) Obtain a psychological evaluation of Mitchell with a psychiatrist, or if there is an adequate showing as to why no psychiatrist is available a psychologist with adequate training and experience in pharmacology, to evaluate the effects of Mitchell's medications on her cognitive abilities and depression;

(2) Hold a hearing before an ALJ at which time the evaluating psychiatrist (or psychologist) shall testify and is available for cross-examination by Mitchell's counsel, if desired; and

(3) Complete the proceedings upon remand and issue a decision within six months (180 days) from the date of the Court's Order.

**IT IS SO ORDERED.**

DATED this 24th day of March, 2014.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge